

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

BERLIE CATLIN MOORE,
#240553

Plaintiff,

VS.

FRANK LEE YOUTH CENTER,
et al.

Defendants.

CASE NO.: 2:07-CV-195-ID

SPECIAL REPORT

COME NOW Defendants, **Debra Martin and Vivian Langford**, by and through Troy King, Attorney General for the State of Alabama, via undersigned counsel, and do hereby submit the following Special Report.

PARTIES

1. The Plaintiff, Berlie Moore, (“Mr. Moore”) is an Alabama Department of Corrections (“ADOC”) inmate, incarcerated at the Frank Lee Youth Center (“FLYC”) in Deatsville, Alabama.
2. Mr. Moore has named the following Defendants:
 - a. Debra Martin (“Specialist Martin”), Classifications Specialist, for the FLYC, who is employed by ADOC.
 - b. Vivian Langford (“Sgt. Langford”), Correctional Officer II (“COII”), for the FLYC, who is employed by ADOC.

PLAINTIFF'S ALLEGATIONS AND DEMANDS

Mr. Moore alleges in his complaint that the Defendants have violated his constitutional rights. Specifically, Mr. Moore alleges:

1. Specialist Martin refuses to reclassify him to a lower custody status because he is unable to pass his welding certification exam.
2. Sgt. Langford threatens and harasses Mr. Moore.

Mr. Moore wants to be transferred to another ADOC facility.

DEFENDANTS' EXHIBITS

1. Exhibit A – Affidavit of Specialist Martin, Classifications Specialist at the FLYC for the ADOC.
2. Exhibit B – Affidavit of Sgt. Langford, COII at the FLYC for the ADOC.

DEFENDANTS' RESPONSE

1. Mr. Moore has no right to any specific classification while he is incarcerated in the ADOC.
2. Mr. Moore does not have a right to be housed in any particular facility while he is in ADOC custody.
3. Mr. Moore has suffered no injury as a result of Sgt. Langford's alleged threats.
4. Defendants are entitled to qualified immunity.
5. Defendants are entitled to sovereign immunity.
6. Defendants are entitled to state-agent immunity.

7. Defendants are entitled to functional discretionary immunity.

SUMMARY JUDGMENT STANDARD

Summary judgment is proper if the pleadings, affidavits and documents submitted to the court show that there is no genuine issue of material fact. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249-250 (1986). Once the movant has established that there is no genuine issue, then the burden shifts to the non-movant to rebut the movant's prima facie showing. Celotex Corp. v. Catrett, 477 U.S. 323 (1986). Unless the non-movant can submit substantial evidence that a genuine issue of material fact does exist, the movant is entitled to summary judgment. Id. Merely submitting restated allegations of the complaint is not sufficient to meet the non-movant's burden. Morisky v. Broward County, 80 F.3d. 445, 448-449 (11th Cir. 1996). This case is ripe for summary judgment because there is no genuine issue of fact to Mr. Moore's claims, and the Defendants are entitled to judgment as a matter of law.

STATEMENT OF UNDISPUTED FACTS

Mr. Moore is an inmate housed at the FLYC in Deatsville, Alabama where he is completing a vocational training program. Mr. Moore was ordered to complete the vocational training program by his sentencing judge, Judge Bahakel. (See Ex. A.)

ARGUMENT OF FACT AND LAW

I. Defendants are Entitled to Qualified Immunity

“[Q]ualified immunity protects government officials performing discretionary functions from suits in their individual capacities unless their conduct violates ‘clearly established statutory or constitutional rights of which a reasonable person would have known.’ ” Dalrymple v. Reno, 334 F.3d 991, 994 (11th Cir.2003) (quoting Hope v. Pelzer, 536 U.S. 730, 739, (2002)). In determining whether qualified immunity is appropriate in a given case, “[t]he court must first ask the threshold question whether the facts alleged, taken in the light most favorable to the plaintiffs, show that the government official's conduct violated a constitutional right.” Dalrymple, 334 F.3d at 995 (citing Saucier v. Katz, 533 U.S. 194, 201, (2001)). If Mr. Moore's allegations do not establish a constitutional violation, “there is no necessity for further inquiries concerning qualified immunity.” Saucier, 533 U.S. at 201.

A. Claims against Specialist Martin

Mr. Moore has failed to allege any facts supported by material evidence that would establish a constitutional violation by Specialist Martin. Mr. Moore claims that Specialist Martin refused to classify him to “a lesser restrictive custody status.” Mr. Moore has no right to any specific classification while he is incarcerated in the ADOC. As this Court stated in Black v. McDonnell, 2006 WL 1180795, *2 (M.D. Ala.), a prisoner “has no constitutional right to a specific classification and/or security status; correctional officials may change his classification for a good reason, a bad reason, or no reason at all.” Likewise, Mr. Moore has

no right to be housed in any particular prison in any particular state. See Olim v. Wakinekona, 461 U.S. 238 (1983).

B. Claims against Sgt. Langford.

Mr. Moore has failed to allege any facts supported by material evidence that would establish a constitutional violation by Sgt. Langford. Mr. Moore claims that Sgt. Langford “harasses and threatens” him. Mr. Moore’s general allegation fails to state a constitutional violation in that he does not describe the manner in which he has been threatened or harassed. Mr. Moore fails to state that he has suffered due to the alleged harassment or threats. Because Mr. Moore failed to allege that he has suffered some injury as a direct result of Sgt. Langford’s conduct, his U.S.C. Section 1983 claim fails.

CONCLUSION

Based on the foregoing, Defendants **Debra Martin and Vivian Langford** respectfully request that this court consider treating this Special Report as a Motion for Summary Judgment, and enter judgment in favor of the Defendants.

RESPECTFULLY SUBMITTED,

TROY KING
ATTORNEY GENERAL
KIN047

/s/ J. Matt Bledsoe-----
J. Matt Bledsoe (BLE 006)
ASSISTANT ATTORNEY GENERAL
Counsel for Defendants Vivian Langford
& Debra Martin

OF COUNSEL:

OFFICE OF THE ATTORNEY GENERAL
11 South Union Street
Montgomery, AL 36130
(334) 242-7443
(334) 242-2433 (fax)

CERTIFICATE OF SERVICE

I hereby certify that I have, this 30th day of May, 2007, electronically filed the foregoing pleading with the Clerk of the Court using the CM/ECF system, and that I have further served a copy of the foregoing on the Plaintiff, by placing same in the United States Mail, postage prepaid and properly addressed as follows:

Berlie Catlin Moore, #240553
Frank Lee Youth Center
PO Box 220410
Deatsville, AL 36022

/s/ J. Matt Bledsoe-----
OF COUNSEL

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Berlie Catlin Moore AIS#240553)

Plaintiff,)

v.)

Alabama Dept. of Corrections, et al.,)

Defendants,)

CIVIL ACTION NO. 2:07CV195ID

AFFIDAVIT

Before me, the undersigned authority, a Notary Public in and for said county, personally appeared Debra Kay Martin, who being known by me and first duly sworn, deposes and says on oath as follows:

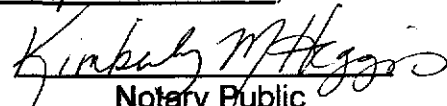
My name is Debra Kay Martin and I am presently employed as a Classification Specialist with the Department of Corrections, Frank Lee Youth Center, Deatsville, Alabama. I am over twenty-one (21) years of age and I have personal knowledge of the facts set forth herein.

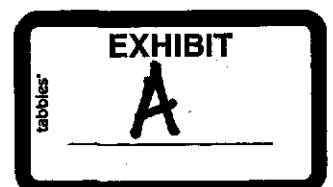
1. Inmate Moore was ordered by his sentencing judge to complete a vocational training program during his incarceration.
2. Defendant Martin has no control over decisions made by the sentencing courts.
3. Defendant Martin has no knowledge of any discriminatory practices against Berlie Moore.


Debra Kay Martin

STATE OF ALABAMA)
ELMORE COUNTY)

SWORN AND SUBSCRIBED BEFORE ME AND GIVEN UNDER BY HAND AND
OFFICIAL SEAL THIS, THE 2nd DAY OF April, 2007.


Notary Public



37-10

COURT DRI: 001025 J

Entered Terminals
5-5-05 (date) *lmf* initials

AFFIDAVIT

Vivian Langford

(Affiant)

2:07-CV-195-ID

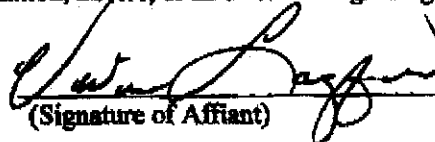
(Case #'s)

STATE OF ALABAMA

County of Elmore

I, Vivian Langford have prepared this affidavit in response to civil actions filed by Inmate Berlie Moore AIS #240553. I am assigned to Frank Lee Youth Center

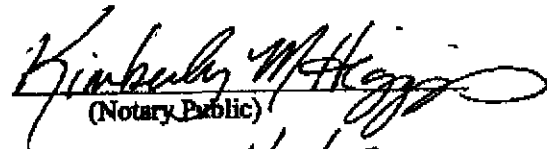
1. Inmate Moore file a complaint that is untrue. I have no knowledge of what Inmate Moore is referring to in his complaint. I have not threatened or intimidated Inmate Moore in any way at any time.
2. Inmate Education is not one of my areas of responsibilities at Frank Lee Youth Center and I do not involve myself in the process. Welding is a class given to inmates at J.F. Ingram Technical College (Trade School). Trade School assignment is not one of my responsibilities. Issues involving Trade School is coordinated through J.F. Ingram and the Classification Specialist at Frank Lee Youth Center.
3. Classification duties are not a part of my responsibilities and I do not involve myself in classification duties. I have not given Inmate Moore any information, advice, or instructions regarding his custody as he claims.


(Signature of Affiant)

P.O. Box 220410
(Address)

Deatsville AL 36022
(City, State, Zip Code)

Sworn to and subscribed before me this 9th day of March, 2007.


(Notary Public)

My Commission Expires 1/9/09

Seal

PCNG40 800-631-6988

EXHIBIT

B